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May 26, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: CC Docket No. 96-115

Dear Ms. Salas:

Transmitted herewith, on behalf of TDS Telecommunications Corporation (TDS Telecom), are an original and nine copies of its Petition for Reconsideration in the above-referenced proceeding.

In the event there are any questions concerning this matter, please contact the undersigned.

Very truly yours,

Margot Smiley Humphrey

Margot Smiley Humphrey

cc (w/enc.): Lisa Choi, Esq. Rm. 544

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996:	)	
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other	)	
Customer Information	)	

TDS TELECOMMUNICATIONS CORPORATION
PETITION FOR RECONSIDERATION

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May 26, 1998

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SUMMARY

In enacting the 1996 Act's national policy commitments to competition, deregulation and nationwide availability of new telecommunications infrastructure and services, Congress included §222 to prevent abuses in case the new regime prompted carriers to disclose or misuse confidential information about customers' individual use of telecommunications services. Acting with good faith but excessive regulatory zeal, the Commission expanded the Act's simple statement of carriers' duty to preserve the confidentiality of sensitive customer records into a costly, complicated new regulatory Rube Goldberg machine that threatens to rob customers of information about market developments and choices tailored to their needs and to impede the proliferation of modern infrastructure and advanced services.

Small and rural LECs have been using CPNI before the rules without customer objections. The Act did not call for severe CPNI restrictions that will stifle formerly permissible uses of information that customers have not found objectionable. Indeed, depriving customers of fact-based suggestions from their chosen carriers about how to maximize the quality, flexibility, capabilities and value they obtain for their telecommunications dollars is the opposite of what Congress intended the Act to achieve. The rules mistakenly link privacy interests to spurious mutually-exclusive boundaries between the telecommunications, information and CPE components of increasingly integrated offerings. But information about customers' use of hybrid telecommunications services necessarily includes or implicates these adjunct information products and facilities. Customer confusion and even deception will result from, for example, forcing carriers either to seek approval to use CPNI to market the equipment necessary to new digital subscriber line services or caller I.D. services or to omit the price of such essential

equipment from their disclosure of what the improved service will cost. Similarly, customers will not understand why their approval is necessary before their carrier can use the records about that particular customer to suggest how to improve quality or save money on Internet access by avoiding toll charges because "information service" is involved, but no such duty attends the marketing of the information delivered by Caller I.D. Nor is there much "privacy" to protect with regard to CPNI the carrier can use without approval to market whatever telecommunications services the carrier or any affiliate provides the customer.

The burden of explaining, obtaining and documenting customer approval should not needlessly stand in the way of tailored carrier marketing or "one stop shopping" options that will facilitate a customer's use of beneficial infrastructure and service advances. Inbound calls initiated by the customer provide even less justification for requiring, rather than inferring, approval to use that calling customer's own records to respond.

The Commission also adopted detailed, intrusive and costly requirements for software "flags," audit tracking and recording, employee training, record keeping and compliance certification based on "personal knowledge." Although the Commission breezily declared that compliance would be fairly easy, the estimated cost of installing the "flags" alone for TDS Telecom would exceed $1 for every TDS Telecom LEC access line, and the installation would require five person-years of work. To integrate the four TDS Telecom information systems and generate the novel kinds of employee access to data the audit tracking rules demand would require a complete overhaul of the four systems, costing tens of millions of dollars. Training would raise the estimated costs by about $54,000 and consume four months above and beyond the systems overhaul. Customers will be the losers both from diverting resources form more

beneficial uses and from probable rate increases. Yet, the CPNI Order neglects even to address the cost recovery for the enormous nationwide compliance costs the excessive and unnecessary new regulations will cause.

TDS Telecom urges the Commission to preserve existing customer information flows, to allow CPNI use to design and offer integrated telecommunications strategies tailored to individual needs and to minimize regulatory obstacles to showing customers how to benefit from improved technologies and services. The Commission should also await complaints and evidence of objectionable invasions of customer privacy before saddling carriers and customers with convoluted and expensive compliance burdens entailing fundamental changes in carriers' basic information systems.

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TDS TELECOMMUNICATIONS CORPORATION
PETITION FOR RECONSIDERATION

TDS Telecommunications Corporation (TDS Telecom or TDS), on behalf of its 106 local exchange carriers (LECs) operating in 28 states and by its attorneys, files this petition for reconsideration of the Commission's decision adopting rules on carriers' obligations with respect to customer proprietary network information (CPNI).[1] The CPNI Order implements §222 of the Telecommunications Act of 1996 (1996 Act) by imposing an expensive and complicated regulatory obstacle course on all telecommunications carriers' use of information about how their individual customers use telecommunications. In the past it has been lawful for small and rural LECs -- for all but the largest carriers -- to use that information in offering customers new services and service packages to meet their particular needs. TDS Telecom urges the Commission to modify its unnecessarily intrusive restrictions that threaten to "protect" customers from valuable as well as

[1] Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket Nos. 96-115 and 96-149, FCC 98-27 (released February 26, 1998) (CPNI Order).

sensitive information — including disruption of existing uses of CPNI that customers have not found invasive to their privacy. TDS Telecom also urges the Commission not to squander industry resources on internal policing, since those resources could be better spent on providing innovative, economical and evolving services and tailored service packages for customers. Information about products and choices is essential to advancing technologies and competitive markets. The Commission must not act lightly to deny customers access to their telecommunications providers' help in using information about their own calling profile to provide them choices of advanced services, tailored packages and optimal savings.

The CPNI Rules Go Far Beyond Implementing the Privacy Protections in §222

Section 222(a) of the 1996 Act creates a general "duty to protect the confidentiality of proprietary information of, and relating to ... customers." Where the customer is another carrier, the Act specifically prohibits the providing carrier from using CPNI "for its own marketing efforts."[2] Otherwise, the statute provides — less restrictively and with several exceptions — that the "privacy requirements" prevent telecommunications carriers that have not obtained a customer's approval from using "individually identifiable" CPNI except to provide "the telecommunications service from which such information is derived" or "services necessary to, or used in, the provision of [such service]." Congress left the Commission broad discretion in how to implement carriers' CPNI obligations.

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[2] §222(b)

Although the CPNI Order opens (¶1) with the Commission's customary legislative history quotation about Congress's intent to establish a "pro-competitive, deregulatory national policy framework," the CPNI rules are far from deregulatory. The Commission stated its belief (ibid.) that Congress enacted §222 for a prospective purpose, "to prevent consumer privacy protections from being inadvertently swept away with the prior limits on competition."[3] Instead, the Commission "swept away" pre-existing rights of all carriers (except the Bell Operating Companies (BOCs)) to use CPNI without securing customer consent -- and interfered with routine and longstanding uses of CPNI, without securing customer approval, to which customers had not objected. Indeed, the Commission rejected out-of-hand deregulatory proposals to allow carriers to satisfy the statutory duty to protect "confidential" customer information, while not depriving customers of information about advances and improvements in service suited to their individual telecommunications profiles. Leaving more to the marketplace and the competitive pressures on providers not to antagonize customers by invasive use of private records, the Commission could then step in if there were abuses or complaints.

At the very least, the Commission should reconsider and change its "verdict first, trial later" approach. It had no basis for assuming that severe intervention was necessary to control abuses by adding a new consent requirement for non-controversial pre-existing lawful uses of CPNI by carriers, such as marketing equipment associated with particular services, offering new service packages suited to a customer's individual needs and services regarded by customers as adjunct to

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[3] The CPNI Order (p. 4, n. 3) quotes Representative Markey's explanation of the new CPNI requirements, which also looked towards avoiding potential future invasions of privacy that might otherwise be spawned by the "new era of communications..."

telecommunications services and suggesting customer-specific competitive alternatives to retain or win back customers.

The Commission should also temper the CPNI Order's unnecessarily heavy-handed regulatory machinery by eliminating its extensive audit tracking, training and certification requirements in favor of initial industry self-regulation. Detailed Commission intervention should at least initially be sparked by complaints, and remedial regulatory measures should be adopted only if actual abuses of §222 warrant.

Carriers that have been using CPNI, without customer objections, to provide information and opportunities for service and technology enhancements should not be subjected to punitive government micro-management of their customer relationships that seems to proceed from an unjustified presumption that carriers are guilty of abusing their customers' privacy now and will continue, unless they can prove that they are not.

The Commission suggests (¶167) that imposing its overzealous CPNI restrictions on all carriers levels the competitive playing field. That is not true: The Order brings an excessive new layer of regulatory expenses and burdens for carriers like the TDS LECs that were not previously subject to the Commission's BOC-only restrictions, but provides some relief for the BOCs. The burden of new requirements and system upgrades that go beyond what the statute requires falls more heavily on small and rural carriers with limited resources than on the largest companies. Moreover, non-BOC LECs may have to discontinue marketing their services and informing their customers of how they can benefit from new products, services and enhancements in ways that their customers have come to expect. TDS Telecom, for example, has invested approximately $2 million in developing a system to make then-lawful use of CPNI to analyze what services and products will

best satisfy their individual customers' telecommunications needs and patterns. The new obstacles to using this system for marketing and advising customers could substantially undermine or even destroy the value of the investment to the TDS Telecom ILECs and their customers.

The costly compliance machinery and obstacles to marketing now imposed on carriers will also give Internet service providers and CPE distributors, which are spared those burdens, a competitive advantage over carriers that also provide CPE or Internet access service. On top of the additional costs of compliance by minutely tracking, recording and supervising customer information and contacts, the underlying presumption that using information about customers to widen their informed choices is inherently suspect is unjustified. The Commission should encourage the competitive marketplace to function as it does best — with a free flow of information, stemmed only to prevent private customer information from being used in ways the customers find offensive.

Given past experience under a regime that left use of CPNI by most carriers unregulated and was apparently satisfactory to customers, the Commission can afford to rely on far less regulatory interference than it imposes in the CPNI Order to protect customers' expectations and privacy concerns. To avoid disruption of existing information flows and customer contacts, the Commission should leave in place a carrier's current uses of CPNI that have not led its customers to complain to the carrier or otherwise object. There is good reason to infer that customers have approved such use, are not concerned with protecting the "confidentiality" of the information involved or consider the use to be sufficiently related to the service the carrier provides for them.

Nothing in the 1996 Act requires or even suggests a need for regulatory overkill in the name of protecting customer privacy. The Commission should rethink its approach and significantly scale back its CPNI rules to strike a better balance between (a) real-world customer concerns regarding

the confidentiality of information about their use of the public telecommunications network and (b) beneficial customer access to information about innovative and cost-effective ways to use telecommunications and information resources

The Rules Arbitrarily Restrict the Use of CPNI to Market or Package "Information Services" Without Customer Approval

The Commission relies on an unnecessarily cramped reading of §222 to restrict the scope of a carrier's use of customer information without securing prior customer approval. For example, although customers now typically regard services such as voice mail, store and forward, short Messaging and similar "information services" to be just as much part of a complete local service offering as speed dialing, computer-provided directory assistance, call blocking, call return, caller I.D., call forwarding and similar "telecommunications services," the Commission does not. It has resurrected its complex and confusing pre-Act distinction between "telecommunications" and "information" offerings to require customer approval for using information about the former but not the latter service features, when almost nobody can discern which is which. The distinction is arbitrary, at best, and there is no conceivable reason why a customer would have different expectations or sensitivity about the privacy of customer-specific calling information with respect to the two categories. It would be even less likely that a customer would consider its local carrier's use of such individual calling information to suggest alternatives for potentially higher quality or more cost-effective Internet access to be more invasive of the customer's privacy or more linked to the provision of information than use in connection with, for example, caller I.D. service. The distinction is spurious and should have no role in regulating the use of CPNI.

A major goal of the 1996 Act is to encourage the availability and use of affordable telecommunications and information services in rural, as well as urban areas. §254(b)(3). The incumbent LEC's initiative in packaging Internet access via its telecommunications network with the ability to use the Internet is often the only way rural communities have gained reasonably priced access to this telecommunications and information resource, without incurring the charges for toll calling. It makes no sense to attribute to Congress the intention to burden the use of CPNI to inform a LEC's customer of this more affordable alternative for gaining entry to the nation- and world-wide opportunities of Internet participation.

Thus, the notion that information about the customer's use of the carrier's local and access service is not "derived," for purposes of §222(c)(1), at least in part from records of local or access service provided via the telecommunications component of Internet access service (or any other hybrid information offering that includes telecommunications) collides with logic, legal reasoning, national policy and common sense. The development of telephone service over the Internet illustrates even more sharply the pointlessness of the "telecommunications" vs. "information" distinction the CPNI Order uses to argue that some telecommunications transmissions are neither part of nor "used in" a carrier's telecommunications service. The Commission should delete §64.2005(b)(1)'s exclusion of "information" services with a telecommunications component from the use of CPNI without approval permissible under §222

The Rule Arbitrarily Restricting the Use of CPNI to Market CPE Without Seeking Customer Approval Is Also Misguided

By the same token, it is not reasonable to hold that CPE is not part of a carrier's local exchange or access service or, at least, "used in" or "necessary to" a carrier's "provision of telecommunications service," even when specific CPE is essential to a service and useful only in provision of that upgraded local or access service.[4] Part of the infrastructure development Congress sought to stimulate by enacting the 1996 Act is faster, higher quality and more economical customer links to the public network. It serves that goal for carriers to deploy and market new technology to improve customer connections. Often, particular CPE is necessary for a customer to obtain the benefits of a new technology. Often, too, the CPE may be useful solely for transmissions involving a particular new advanced telecommunications service offering by that carrier.

For example, Digital Subscriber Line technology advances, such as ADSL or VDSL, require modems that are specific to the service provider and the particular service application. The telecommunications products and equipment are varied and innovative and, as yet, are not covered by any generally accepted standards. Moreover, the providing carrier and the Information Service Provider which a customer uses are typically the only source for the necessary modems. To say that

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[4] The Commission's May 22, 1998 clarification of the CPNI Order seems to indicate that whether CPNI may be used to market CPE as connected with a telecommunications service depends on whether past dealings with a CMRS customer bundled the service and CPE under a single price. However, the level of customer privacy requiring "protection" cannot rationally depend on whether the customer has been informed of a separately priced package of telecommunications service and CPE essential to it or given a single price. The "privacy" of customer-specific information about the benefit of the service and its necessary adjunct CPE is no more sensitive and no less useful to the customer when the Commission prevents a LEC from bundling CPE or information into its tariffed telecommunications service than when it allows a CMRS to bundle the telecommunications and CPE.

the carrier can use CPNI without approval to market the service but not the essential equipment component would effectively vitiate §222's express permission for use of CPNI without consent for the provided category of service because, without the CPE, there can be no service. It might even be deceptive to the customer to offer the newer, more advanced subscriber line service without disclosing both that the CPE is essential and the terms on which the customer may obtain it. The statutory flexibility to use CPNI without consent recognized by §64.2005(c)(3) should clearly extend to marketing CPE with a telecommunications capability that cannot, as a practical matter, be used as a stand-alone service without the CPE.

ISDN and similar digital telephone services require the customer to use special telephone instruments. It is not sound public policy to encourage the carrier to market the service without the necessary equipment, since the customer might not want to make the economic decision to purchase the service unless it knows about the need for and price of the CPE integral to using the service. It also reduces customer convenience to allow a carrier to market, without customer approval, other specialized service features, such as caller I.D., that require telephones or other equipment with specialized displays or buttons, but not to allow the carrier to market the equipment. Congress unequivocally stated its intention in the 1996 Act to encourage carriers to offer customers throughout the country the opportunity to take advantage of new technology and advanced services.

What is very clear is that the Commission's requirement of general notice and approval for the use of CPNI in connection with marketing CPE will often rob the consumer of valuable information that is essential to obtaining all the relevant information necessary to a prudent decision on a specific telecommunications service. Providing general notice of the customer's right to withhold or limit consent and soliciting approval that will remain effective until revoked or limited

by the customer under §64.2007 involves enough of a burden that the carrier will be deterred from seeking such approval on a case by case basis. And use of CPNI that a customer would be likely to approve if the particular case were presented will therefore give way to either (a) a carrier's reluctance to engage in the request for more open-ended approval or (b) a customer's reluctance to provide an opening for an unforeseeable succession of marketing approaches. Indeed, the extra cost to small carriers of compliance with the CPNI notice and approval requirements may well discourage many small carriers from entering markets or providing new services with CPE components or information links, to the detriment of their customers and nationwide infrastructure progress.

In short, artificially divorcing CPE marketing from the underlying telecommunications service is more likely to deprive customers of opportunities to enhance their telecommunications service and access to information, contrary to the intent of Congress, than to protect them from use of information that they would consider an invasion of their privacy. Indeed, in the case of CPE that is "necessary to, or used in, the provision of" a telecommunications service for which the carrier is free to use CPNI to market the service improvement, the rule would "protect" the customer from use of information which the carrier is already entitled to use for marketing the associated service. Rather than protecting customer privacy that has already been surrendered by §222, the Commission should remove the bar in §64.2005(b)(1) on use of CPNI without approval to market CPE for use with the carrier's services.

The Inbound Marketing Requirements Are Overly Restrictive

Although §222 does speak of approval when excepting inbound marketing from the CPNI use restrictions, the situation is clearly meant to be treated differently from the other approval

requirements. It does not make sense to impose the same kind of prior notice, affirmative approval and verification of the customer's assent when the customer has initiated the call. It would better implement the exception Congress intended to provide for inbound marketing to infer approval from the call unless the customer indicates otherwise on the call. The Commission itself cites (n. 390) the experience of Ameritech and US West indicating an approval rate of 90% and 72%, respectively, in a study of inbound calls. Hence, it is plainly not necessary to assume the opposite for inbound calls and take up the customer's time with notifications and explicit approval requests when the customer initiated the call. The Commission should reduce the unnecessary burdens it has placed on use of CPNI for marketing on inbound calls.

The Tracking, Auditing and Training Requirements Are Excessively Burdensome for Small and Midsized Carriers

The self-policing and certification scheme the CPNI Order imposes on all carriers will require drastic and costly changes by TDS Telecom LECs and their affiliates in their information systems that will overload systems and personnel already strained by the demands of other federal government mandates. Although the Commission correctly recognized (¶195) that curbing employee access to CPNI would impair use of customer information for inbound calls, the Commission erroneously assumed (¶194) that far-reaching use restrictions, including software "flags," elaborate employee training and record keeping and certification by a corporate officer would not be "unduly burdensome." It declined to limit the heavy burdens only to larger carriers (¶193), declaring that "[a]ll carriers must expend some resources to protect certain information of their customers" to meet the §222 duty. In contrast, the statute is silent on what kind of enforcement

mechanism or carrier costs, if any, Congress had in mind. The Commission shrugged off the burden on "small or rural carriers" (¶194), offering overburdened carriers only the expense and burden of pursuing waivers if they could both show undue burden and suggest an alternative enforcement mechanism in the event of waiver. Citing (n. 689) only to ex parte submissions by huge carriers with significant urban service bases -- AT&T, Bell Atlantic and Sprint -- the Commission believed that "[c]arriers have indicated that their systems could be modified relatively easily to accommodate such CPNI flags." It also mandated (¶¶198-200) employee training, disciplinary systems for employees that "misuse CPNI," elaborate verification by electronic audit and recording systems and supervisory review of every proposal to use CPNI for outbound marketing. The CPNI Order concludes (¶198), again based (n. 691) on ex parte statements by huge carriers -- Bell Atlantic/Nynex and a BOC Coalition -- that the sweeping requirements devised by the Commission "represent minimum guidelines that we believe most carriers can readily implement and that are not overly burdensome."

The Commission's casual assumption that all carriers can readily do what some of the nation's largest carriers seemed to find feasible sorely mistakes the resources and capabilities of small and rural telephone companies such as the TDS Telecom LECs. The software development for data flags alone would be a huge financial burden on the TDS Telecom ILECs -- estimated at more than $630,000. A TDS Telecom information systems expert summed up the time demand for installing the software flags: "[I]f you assume that a person would be able to work 5 days a week with no time off for anything, and was productive 8 hours a day, it would take a minimum of 5 people a year to get this done."[5]

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[5] For example, the Commission (¶ 198) directs carriers to disclose the customer approval status within the first few lines of the first screen. However, since TDS Telecom information

The audit tracking and reporting function could not be achieved by any upgrade TDS Telecom could discover, so that its systems would have to be completely overhauled or replaced at a cost of tens of millions of dollars. This is the case because, contrary to the Commission's conjectures, TDS Telecom LECs and other similar small and rural LECs do not have the kind of integrated information system that centralizes information about all company activities. In TDS Telecom's case, information that could be considered as CPNI resides in four separate major information systems: customer care, billing, plant records and trouble reporting systems. The systems run on different platforms and were designed for minimal interaction, so that changes to institute elaborate tracking and auditing records would have to be implemented separately for each system. Our billing and plant record systems have been in place for a long time, which would make finding an alteration process even more difficult. It would be an added Herculean task to apply the safeguards at the plant record and switch level, which also contain CPNI which could theoretically be used for marketing purposes. The information systems and the structure of the LECs' workforce is not designed to track the information the rules require. The TDS Telecom customer service and marketing personnel are not separate, and the information systems have been designed to deal with changes in information in the record, not to reflect what employee looks at it or what may be the purpose of each individual access.

The CPNI safeguards are further complicated by the Commission's decision that customers must be allowed the option of approving only partial use of CPNI. This additional level of complexity would add to the expense and difficulty of making the necessary programming changes.

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systems allow screens to be accessed in any order, the flag would apparently have to appear on every screen with CPNI

Indeed, the Commission's "total service" concept, while better than an even narrower interpretation of the §222(c)(1) permission to use CPNI for services provided to a customer, adds to the challenge because TDS affiliates offering cellular, PCS and paging do not have information systems integrated with or compatible with those of the TDS Telecom LECs.[6] As noted earlier, the customer care system, an effort within TDS Telecom to pull together more extensive information about customers' service needs and use of telecommunications and related services that would help to discern and market a package of services that would best fit an individual customer's telecommunications and information needs, may not remain usable if the Commission leaves its broad restrictions on CPNI use in place. If that system, developed over two years at a cost of more than $2 million, cannot be used as planned, both TDS and its customers will be deprived of a valuable tool for infrastructure and service advancement.

Consequently, it is virtually impossible to achieve the compatibility and interoperation of its information systems assumed to be easy and non-costly by the Commission. The possibility that future privacy violations could arise from sharing information about a customer's service record with that customer is simply not sufficient justification for the expense and employee time necessary to provide the mandatory "audit trail" by a complete, multimillion dollar redevelopment of all four of the TDS Telecom information systems.

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[6] To add to the compliance problems, the TDS Telecom LECs have been acquired at different times, from many different buyers and with their own information systems. Some are still using their own individual systems. Each such system must be altered separately. Where the systems are antiquated or idiosyncratic, the upgrade costs would likely outweigh any conceivable benefits to customers, who would eventually have to pay for the "safeguards."

Training will also be expensive and disruptive. For example, initial training for our customer care system took over one year. TDS Telecom estimates that developing and delivering CPNI training will cost approximately $54,000 for initial implementation. It will take at least one month to develop the training program, followed by 2-3 months of field training. This training time is above and beyond the time necessary to alter the four information systems. Unless the Commission rescinds the onerous safeguards, CPNI training will have to cover changes to and use of all four of the information systems for a larger number of employees than were involved in the training program for the customer care system described above. The CPNI training program will have to provide detailed answers to questions that may come up in deciding whether consent is necessary under various hypothetical circumstances.

Even if the complicated systems changes were not required, detailed training would be essential and difficult because of the complexity of the CPNI information use rules and the failure of even the long and detailed CPNI Order to deal with many potential questions, such as the precise requirements for adequate notice, verification and adequate documentation of customer approval (and any limitations placed on the approval) and what the requirement for an officer to certify compliance from "personal knowledge" actually means. There will not only be a large number of employees at dispersed locations to be trained, but the limited number of employees at individual TDS LECs also dictates that not all employees from a site can be absent simultaneously for training. Thus there are many reasons that will make it difficult to economize on training costs.

The system-wide upgrades, training and ongoing CPNI requirements will also overtax TDS Telecom LECs by adding to the pressures caused by the "Year 2000" problem, continuing equal access requirements and the future need to implement Local Number Portability and CALEA. With

the number and scope of the requirements imposed by the 1996 Act and other recent developments. TDS employees are already finding it hard to comply on a timely basis, even before the major added demands of these CPNI "safeguards" that go so far beyond what the statute requires. Our customers are the other losers from the never-ending list of new requirements, deadlines and expenses because time and resources are diverted from upgrades and modernization of the systems to improve the clarity of our bills, continue to improve our response to troubles and improve system compatibility.

The Commission Should Provide for Adequate Interstate Cost Recovery for the Extensive Compliance Measures It Has Adopted

The CPNI Order fails to provide an adequate means to recover the costs of the major system alterations carriers must make to comply. Small and rural companies will find that not all the alterations are less costly when a smaller area or customer base is involved. Many costs, such as software development expenses, are not necessarily significantly less in smaller scale operations. Indeed, a multi-million dollar upgrade requirement may have a limited effect on a company serving millions of customers, but the same expense would amount to a much more significant cost per access line for even the approximately one-half million customers served in the aggregate by the TDS Telecom LECs. Since the costs will not be uniform for the different TDS Telecom LECs, the cost per access line in some areas may be particularly exorbitant.

The CPNI Order does not explain how carriers are expected to recoup the investment and expenses incurred in complying with the software flags, audit tracking, record keeping, training and other components of the Commission's extensive new regulatory machinery to implement the CPNI provision. TDS Telecom believes that the Commission should ensure sufficient interstate cost

recovery, since the agency's extreme interpretations of the much more modest duty imposed by Congress in §222 are the cause of what are likely to be staggering nationwide compliance costs. If the costs of incumbent LEC implementation and ongoing compliance are to be subject to the jurisdictional separations process, a substantial part of the recovery will be shifted to the intrastate jurisdiction, and recovery would likely fall primarily on local ratepayers. The states, however, have been given no role in designing the mechanism and no opportunity to moderate the excessive costs of the new program. They may be unwilling to provide for rates that will recoup the new intrastate cost burden. TDS also doubts that Congress meant its protection of customers' right to privacy of CPNI to impose new costs on the customers it sought to "protect" or that customers' desire for the privacy of such information – which carriers may already use in connection with marketing any services they or their affiliates provide for the customer – extends to a desire to pay more in their rates for the elaborate compliance system fashioned by the Commission on their behalf. The Commission should recognize these new costs as interstate in nature and provide for their recovery through a nationwide averaged, clearly identified flat charge on all customers.

CONCLUSION

The Commission should reconsider and modify its CPNI requirements and safeguards to avoid regulatory overkill, preserve existing information flows to which customers have not objected and which enrich competitive choices for customers, encourage customers to use advanced new technologies and services, ensure customer convenience and information access for inbound marketing and relieve carriers and customers from shouldering enormous expenses and

resulting rate increases for "safeguards" that far exceed the privacy concerns of the very customers §222 seeks to protect.

Respectfully submitted,

TDS TELECOMMUNICATIONS CORPORATION

By: /s/ Margot Smiley Humphrey
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May 26, 1998